

JOINT USE POLE AGREEMENT

BETWEEN

ILLINOIS POWER COMPANY

AND

MCDONOUGH POWER COOPERATIVE

JOINT USE POLE AGREEMENT

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Appendix

Annual Rental Cost

JOINT USE POLE AGREEMENT

THIS AGREEMENT is made and entered into this 30<sup>th</sup> day of January, 1981 by and between the ILLINOIS POWER COMPANY, an Illinois corporation, party of the first part hereinafter called "Illinois Power," and MCDONOUGH POWER COOPERATIVE, an Illinois "not-for-profit" corporation, party of the second part, hereinafter called the "Cooperative,"

WITNESSETH:

THAT WHEREAS the parties hereto now have constructed and which are in operation certain electrical transmission and/or distribution lines and in the future will have additional electrical transmission and/or distribution lines in the same locality, and

WHEREAS it is considered to be to the advantage of both parties that they make joint use of pole lines whenever the facilities of both parties hereto are required to be placed in the same location and on the same rights-of-way, and,

WHEREAS the conditions determining the necessity or desirability of joint use depends upon the service requirements to be met by each party, including considerations of safety and economy, and each of them should be the sole judge of what the character of its circuits should be to meet its service requirements and whether or not these service requirements can be properly obtained through the joint use of poles;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE 1  
DEFINITIONS

APPLICANT shall mean the party seeking joint use of a pole or poles owned by another party.

ATTACHMENTS shall include crossarms, brackets, line wires, guy wires, cables, apparatus, fixtures or other appurtenances contacting any pole.

COST OF REMOVAL shall be owner's cost to remove.

JOINT USE shall mean the placing and maintaining of attachments of both parties upon the same pole or providing space for such attachments of both parties.

OWNER OR OWNING PARTY shall mean the party having sole ownership of the pole.

REARRANGING shall mean changing the location of existing attachments on the pole.

SALVAGE is the value of the poles and attachments removed as calculated by the owner.

STANDARD JOINT USE POLE means a pole(s) of sufficient length and strength to support a 7.2/12/5 Kv line for the using party.

SUPPLEMENTAL AGREEMENT shall mean an agreement executed between owning party and using party delineating an accrued inventory of jointly used facilities.

THIRD PARTY shall mean a company not a party to this agreement.

TRANSFERRING shall mean the moving of attachments from one pole to another.

USING PARTY shall mean the party using the standard joint use pole but not having ownership in the pole.

ARTICLE 2  
SCOPE OF AGREEMENT

This Agreement shall cover all wood poles of each of the parties now existing or hereafter erected, when said poles become subject to the provisions hereunder in accordance with the procedure hereinafter provided. Each party reserves the right to exclude from joint use:

- A. Poles which in the owner's sole judgement are necessary for its sole use.
- B. Poles which carry, or are intended by the owner to carry, circuits of such a character that in the owner's sole judgement the proper rendering of its service now or in the future makes joint use of such poles undesirable.
- C. Poles for which the owner has conferred upon others, rights or privileges to use by contract agreement or otherwise, prior to receipt of application for space as hereinafter provided.

ARTICLE 3  
PROCEDURE TO ESTABLISH JOINT USE

Whenever either party desires to make joint use of any pole(s) or rights-of-way of the other party, the following procedures shall be followed:

- A. The applicant shall make written request thereof describing the location of owner's facilities, the size and voltage of the applicant's proposed line, and the proposed method of accomplishing the joint use.

- B. Within thirty (30) days after receipt of notification, the owner will advise the applicant in writing that the proposed joint use is accepted in principle or that it is rejected under the provisions of Article 2.
- C. If the request is accepted in principle by the owner, the applicant shall prepare detailed drawings to be identified as "Exhibit A" and forward three (3) copies of such drawings to owner for approval. Plan and profile drawings, if available, shall be provided by owner upon request for other party's use in preparing said drawings.
- D. Within twenty-one (21) days of receipt of Exhibit A, owner will advise the applicant of acceptance or rejection thereof, stating the reasons therefor. If Exhibit A is accepted by the owner, three (3) copies of a Supplemental Agreement shall be executed by the owner and forwarded to applicant for execution.

Owner shall also include an estimate of his charges for performing the work based on the provisions of Article 15.

- E. The applicant will execute the Supplemental Agreements with Exhibit A attached and return two (2) copies to the owner.

#### ARTICLE 4

##### OWNERSHIP

The parties shall attempt to follow the following guidelines in determining the ownership of jointly used poles:

- A. The ownership of poles jointly used by the parties hereto shall be determined by mutual agreement.

- B. Normally one party will own and maintain the pole(s) in each identifiable section.
- C. The parties will attempt to avoid mixed ownership of poles in any one line.
- D. Normally the party operating circuits of the highest voltage class will own the poles.

#### ARTICLE 5

##### COMPLIANCE WITH SAFETY CODE

All work done by either party hereto on any jointly used poles owned by either party under and pursuant to the terms of this Agreement shall be so done as to conform to the requirements of the then current edition of the National Electrical Safety Code.

#### ARTICLE 6

##### RIGHTS-OF-WAY

Neither of the parties hereto which may have heretofore or which may hereafter obtain rights-of-way, easements, franchise rights, or other authorization for the locations of its poles which may, under the terms of this agreement, be jointly used by the parties hereto, shall or does warrant, covenant or guarantee to the other party the validity of any such rights-of-way, easements, franchise rights, or other authorizations insofar as they affect the right of the other party to construct, maintain and operate its poles and attachments, and if any objections should be made as to the use by the

other party of such rights-of-way, easements, franchise rights or authorizations, or if any additional rights-of-way, easements, franchise rights or authorizations shall be necessary for construction, maintenance and operation of the poles and attachments of the other party, such other party shall at its own expense obtain such rights-of-way, easements, franchise rights, or other authorizations.

#### ARTICLE 7

##### PLACEMENT OF FACILITIES

The position of each party's circuits on joint use poles will be determined by mutual agreement in each case based on considerations as to which party provides service to the area through which the line passes and the position which is best suited to the mechanics of the transition to joint use considering line voltage and the position of attachments to the pole.

#### ARTICLE 8

##### EXTRA HEIGHT AND STRENGTH

Where poles taller or stronger are required for joint use than are required for the owner's sole use, the owner shall have the option of providing poles necessary for joint use at applicant's expense, as shown in Article 15 or allowing applicant to do so at applicant's expense (including cost incurred by owner under Article 15)(2) and selling to the applicant those poles within the joint use section of line not requiring replacement at a cost determined by Article 15(2).



Where applicant desires underbuild on a new line to be constructed by owner or on an existing line, the applicant shall reimburse owner for incremental height and class required under the provisions of Article 15; reproduction cost in item H will be for those poles which would have been installed by owner without underbuild provisions.

Where applicant desires to overbuild an existing line of owner and own the new poles, applicant shall install poles of adequate height and class to accommodate the facilities of both parties. The owner of the existing line will be reimbursed for the costs of transferring to the new poles, in accordance with Article 15(2).

#### ARTICLE 9

##### MAINTENANCE, CLEARANCE - TREE TRIMMING

Except as may be otherwise expressly stipulated in Supplemental Agreements, each party shall place, maintain, rearrange, transfer and remove its own attachments, including, without limitation, any tree trimming or tree removals which may be necessary for the proper clearance of such party's lines, at its own expense. Normal brush control and right-of-way maintenance shall continue to be the responsibility of the owner.

#### ARTICLE 10

##### REPLACEMENT

Unless otherwise expressly provided by a Supplemental Agreement, it is agreed that in the event it becomes necessary to replace any jointly

used pole by reason of damage thereto or destruction thereof, or by reason of the needs of the owner, said owner shall replace said pole and all of said owner's attachments thereto at owner's cost, and the using party shall remove and replace its attachments thereto at its cost. Each party at all times shall perform such work promptly and in such a manner as not to unnecessarily interfere with the service provided by the other party.

If replacement of a pole is required at any future date due to the presence of the using party's attachments, the using party shall either remove its attachments at its cost within one-hundred and twenty (120) days after receipt of notification thereof, or reimburse the owner for installing poles of sufficient height and strength to accommodate the using party's attachments. Billing shall be computed in accordance with the provisions of Article 15.

#### ARTICLE 11

##### RELOCATION

Whenever it is necessary to change the location of a jointly used pole, the owner shall, before making such change in location, give notice thereof in writing (except in cases of emergency, when verbal notice will be given and subsequently confirmed in writing) to the using party, specifying in the notice the time of the proposed relocation, and the using party shall at its sole cost and expense, at the time so specified, transfer its attachments to the pole at the new location. If the relocation is at the request of a property owner or others, the owner shall give notice thereof in writing to the using party, and both parties shall determine if any reimbursement by the property owner or others is required and shall pursue such reimbursements individually.

## ARTICLE 12

### ABANDONMENT

If the owner desires at any time to abandon any joint use pole and the using party desires to continue use of such pole, upon completion of transfer of ownership by means of a bill of sale, the pole shall become the property of the using party. The using party shall pay the owner for such pole the amount as determined under Article 15 computed upon the then current cost of a pole of adequate height and class to satisfy the pole requirements of the using party.

Owner shall remove its attachments not later than the date of the bill of sale.

## ARTICLE 13

### JOINT USE TERMINATION PROCEDURE

If the using party wishes to discontinue the joint use of any of the owner's poles at any time in the future, it shall submit to owner a Supplemental Agreement of proposed joint use termination together with attached drawings showing the locations of the owner's poles on which joint usage is to be discontinued. The using party shall remove its attachments from such joint poles within 120 days of submission of such Supplemental Agreement.

## ARTICLE 14

### RENTAL RATE

On December 31 of each year, the using party shall pay to the owner of the joint use poles hereunder the annual rental cost shown on "Schedule A" (attached hereto and made a part hereof) for each pole of the

owner which has been occupied during any part of all of the preceding twelve (12) months.

## ARTICLE 15

### BILLING FOR WORK DONE

When owner is required to replace, relocate, rearrange or remove poles and/or attachments to accommodate applicant's request for joint use, the following method shall be used for estimating billing before the work is performed and for computing billings after the work is completed. Billing for each project shall be determined by adding the owner's cost including such costs as labor, material, equipment and overhead as shown in items (A) through (G), inclusive and subtracting item (H).

Each party to this contract recognizes that the replacement of conductors constitutes a voluntary improvement in plant, and each party agrees that if the party from whom joint use is requested elects to increase the size of conductors or the number of conductors, the party requesting joint-use agrees to pay estimated costs of transferring existing conductor only, and that costs associated with replacing conductors will not appear elsewhere in the billing.

- A. The installed cost of new poles replacing the existing poles including, when required, additional poles and/or stronger or taller poles.
- B. Cost of removal of facilities (exclusive of conductors) replaced.
- C. Cost of transferring conductors and any other facilities left in service.
- D. Cost of crop and property damages and the cost of rights-of-way required due to relocation.

- E. Cost for stores handling and transportation of  
salvable materials (exclusive of conductors)  
to stores area.
- F. Estimated re-installation cost of salvable  
materials removed.
- G. Value of non-salvable materials (non-salvable due to  
character of materials - not age). The value of re-  
remaining life of non-salvable facilities to be abandoned  
in place shall be based on a 35 year life. To calculate  
the value, multiply present installed cost of the non-  
salvable materials times the remaining life in years  
divided by 35.
- H. Reproduction cost at present prices of old or equivalent  
poles removed.

The owner shall determine disposition of materials removed.

Payment based on the above will reimburse the owner for re-establishing  
his original plant value.

#### ARTICLE 15(2)

As specified in Article 8, when the applicant installs poles to  
replace owners' poles, owners' cost of transfer, installation and removal  
will be reimbursed as follows:

- A. Cost of removal of facilities replaced.  
(Exclusive of conductors)
- B. Cost of transferring conductors and any other  
facilities left in service.
- C. Cost of crop and property damages and the cost  
of rights-of-way required due to relocation.
- D. Cost for stores handling and transportation of  
salvable materials (exclusive of conductors)  
to stores area.

- E. Estimated re-installation cost of salvable materials removed.
- F. Value of non-salvable materials (non-salvable due to character of materials - not age). The value of remaining life of non-salvable facilities to be abandoned in place shall be based on a 35 year life. To calculate the value, multiply present installed cost of the non-salvable materials times the remaining life in years divided by 35.

The owner will retain ownership of material removed from service.

#### ARTICLE 16

##### LIABILITY

It is agreed that whenever any liability is incurred by either or both of the parties hereto for damages, for injuries to or death of employees, or for damage to the property of either party, or for injuries to, or death of, other persons or damage to their property, arising out of the joint use of poles, under this agreement, the liability for such damage as between the parties hereto shall be allocated as follows:

- A. Each party shall be liable for all damages for injuries to, or death of, persons, or for damages to property which are caused solely by its negligence or solely by its failure to comply with the provisions of Article 5.
- B. Each party shall be liable for all damages for injuries to, or death of, its own employees, or for damage to its own property that are caused by the concurrent negligence of both parties hereto, or that are due to causes other than the sole negligence of the other party.

C. Each party shall be liable for one-half of all such damages for injuries to, or death of, persons, (other than the employees of either party hereto), and for one-half of all damages to property (not belonging to either party hereto) that are caused by the concurrent negligence of both parties hereto or that are due to causes other than the sole negligence of the other party.

D. Where, on account of injuries to, or death of, any person due to causes of the character described in the preceding paragraphs of this Article, either party or its insurer shall make any payments to injured employees, or to their relatives or legal representative, in conformity with:

1. The provisions of any Workmen's Compensation Act or any act creating a liability for the employer to pay compensation for personal injury or death of any employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or
2. Any plan for employees' disability benefits or death benefits now established, or hereafter adopted by the parties hereto or either of them.  
  
Such payment shall be construed to be damages within the terms of the preceding paragraphs numbered 1 and 2 and shall be allocated to the parties hereto in accordance with such paragraphs.

- E. All claims for damages for injuries to, or death of, persons or for damages to property arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half of the proposed settlement amount, not including any attorney fees for either of the parties hereto or any estimated future court costs to conclude such proposed settlement.
- F. In the adjustment between the parties hereto of any claim for damages for injuries to, or death of, persons, or for damages to property arising hereunder, the liability assumed hereunder by the parties shall include, in addition to amounts paid to the claimant, all expenses incurred by the parties in connection with defending, resolving, or settling such claims, which shall include without limitation engineering and investigation costs, attorneys' fees, court costs, and all other proper charges and expenditures. Thereafter the party paying said proposed settlement amount shall be indemnified and held harmless from further sums or demands on account of said claim by the other party.



## ARTICLE 17

### PERIODIC REVIEW

It is agreed that either party may request a review of this Agreement periodically after it has been in effect at least one (1) year, for the purpose of adjusting:

- A. The rental payment rate established in the attached Schedule A.
- B. Other provisions of this Agreement as necessary.

Nothing contained in this agreement shall affect or be construed as affecting in any way the rights of either party unilaterally and without the consent of the other to take or initiate action by applicable laws or regulation to make revisions or changes in this agreement.

## ARTICLE 18

### TERM OF AGREEMENT

Unless a waiver is otherwise mutually agreed to, in writing, by the parties to this agreement, this agreement shall continue in full force until terminated by either party at any time upon not less than one (1) year prior notice in writing to the other party of such party's desire to terminate. It is mutually agreed, however, that notwithstanding any such termination of this agreement, the same shall remain in full force and effect with respect to all poles being jointly used by and between the parties hereto at the time of such termination.

The provisions of any and all prior agreements between the parties concerning the subject matter of this agreement are hereby held null and void and any and all provisions requiring not less than one (1) year prior

written notice by either party to terminate any and all such agreements are hereby waived by the parties to this agreement.

This agreement is made subject to the approval of the Illinois Commerce Commission as is provided by law insofar as it relates to Illinois Power and is also made subject to the approval of the Rural Electrification Administration insofar as it relates to Cooperative and shall be binding upon the successors and assigners of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed in their respective corporate names by their offices thereto duly authorized and have caused their respective corporate seals duly attested to be affixed hereto, the day and year first above written.

ATTEST:

ILLINOIS POWER COMPANY

*[Signature]*  
Secretary

*[Signature]*  
W. E. Warren  
Vice President

ATTEST:

*[Signature]*  
Secretary

McDonough Power Coop  
Cooperative  
*[Signature]*  
President